IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 4 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAFAJI A SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MEDIPILLAI FOR MR AJ PATEL for Appellant(s) : 1,
MS. DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 13/06/2007

ORAL JUDGMENT

1. The present appeal is filed by the appellant-convict accused under section 374 of the CrPC,1973

challenging the judgment and order of conviction and sentence dated 22.11.1991 passed by the ld. Special Judge, Mehsana in Special (ACB) Case No.3/1986. The ld. Trial Judge, at the conclusion of the trial, vide the judgment under challenge, convicted the appellant (hereinafter referred to as the accused or appellant accused) for the offence punishable under section 161 of Indian Penal Code and sentenced him to undergo R/I for 1 Year and a fine of Rs.500/, I/d to undergo R/I for 6 months. The ld. Trial Judge also convicted the appellant accused for the offence punishable under section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the PC Act) and sentenced him to undergo R/I for 3 Years and to pay a fine of Rs.1000/, I/d to further undergo R/I for 1 Year. The appellant accused was also charged with the offence punishable under section 218 of IPC, but the ld. Judge, vide impugned judgment, acquitted the appellant accused from the said charge. No appeal against the order of acquittal of the appellant accused for the offence punishable under section 218 of IPC is filed by the State.

2. It is relevant to note at this stage that the

appellant accused has expired pending the hearing and final disposal of this appeal, but vide order passed by this Court on 06.02.2007, widow of the deceased namely Shobhanaben Mafaji Solanki has been permitted to continue the litigation.

3. The appellant accused at the relevant point of time, was serving as Police Head Constable and was entrusted the work of investigation by the Police Station Officer and, therefore, the appellant accused is addressed as Jamadar (Investigation) of Kadi Police Station.

4. Mr. Medipillai, ld. Counsel appearing for the appellant accused has taken this Court through the judgment under challenge as well as oral and documentary evidence led by the prosecution during the course of trial. The impugned judgment is assailed on various grounds mentioned in para-3 of the memo of the appeal. From the paper-book, Mr. Medipillai has referred number of paragraphs during the oral submissions made before the Court. According to Mr. Medipillai, the ld. Trial Judge has grossly

erred in holding the appellant accused guilty and the findings recorded by the ld. Trial Judge are based on erroneous appreciation of evidence and in light of certain inconsistency of the story of the prosecution and the scope of false implication of the accused by the complainant Advocate, the ld. Trial Judge ought to have given benefit of doubt at least to the accused. It was clear defence of the accused that complainant advocate had attempted to put muddamal currency notes in the pocket of his pant when he was near one tea-stall of Mohanbhai Shivabhai Joshi. The accused was about to proceed to the residence of one of the witnesses i.e. Ambalal whose statement was to be recorded by the accused and at that time, complainant had inserted the muddamal currency notes in the pocket of the pant of the accused. According to Mr. Medipillai, the prosecution has failed to prove the demand of illegal gratification and so also the acceptance of muddamal notes of Rs.300/ allegedly found from the pant pocket of the accused inserted by the complainant. In such a situation, no presumption could have been raised against the accused. According to Mr. Medipillai, the

genesis of the story placed by the prosecution is improbable. The conduct of the complainant is the conduct of an accomplice and ld. Trial Judge ought not to have placed reliance on his version and there is no inconsistency worth the name in the evidence of the complainant and panch witness No.1 qua the conversation that has taken place immediately prior to the alleged acceptance of the muddamal currency notes by the accused from the complainant.

5. Ms. Pandit, ld. APP appearing for the State has strongly resisted all these submissions and according to her, the ld. Trial Judge has rightly held that the prosecution has proved the case beyond all reasonable doubts and there is no error in appreciating the evidence led by the prosecution witnesses and mainly complainant, panch witness Amit and one of the members of the raiding party i.e. PSI Mr. Pagi. She has taken me through the evidence of defence witness Mr. Mohan Joshi and has submitted that in the present case, the ld. Trial Judge was right in raising presumption against the accused and evidence of this defence witness is not capable of

rebutting the presumption raised against the accused. This is a case where the demand has been satisfactorily proved by the prosecution and recovery of muddamal currency notes also has been satisfactorily proved beyond doubt. The vital document i.e. panchanama has also been proved by the panch as well as by PSI Mr. Pagi. The officer who had laid trap i.e. PI Mr. Zaveri has expired, but non-examination of Mr. Zaveri on account of his death does not go to the root of the case of the prosecution. Ultimately, the raid was carried out within Mehsana district and investigation, therefore, was handed over to Police Inspector of ACB, Mehsana. He has recorded the statements of all material witnesses and the evidence of PSI Mr. Pagi -a member of the raiding party is sufficient to corroborate the version of the complainant. For short, according to her, reasons recorded by the ld. Trial Judge mainly in paras 26 to 30 of the judgment under challenge, are cogent and convincing in nature and possibility of false implication has been ruled out by the ld. Trial Judge while recording the ultimate finding in the later part of the judgment under challenge. She,

therefore, submitted that no interference is required and present criminal appeal requires to be dismissed.

6. To appreciate the rival contentions, firstly, the Court would like to state the facts of the case of the prosecution in nutshell:-

(i) According to the prosecution, complainant Jashvantkumar Natvarlal Patel had filed a private complaint in the Court of ld. JMFC, Kadi on 01.09.1984 against Patel Prahladbhai Zaverbhai & Others for the offence punishable under section 500 read with section 114 of the Indian Penal code and section 4 of the Bombay Prevention of Ex-Communication Act. The complainant was a practicing advocate at Kadi since 1984. The incident is of August, September and October,1984. So, he was practically a beginner in the profession. On receipt of the complaint, ld. JMFC decided to order inquiry under section 202 of CrPC through police and, therefore, the complaint was sent for inquiry to Kadi Police Station. The inquiry was entrusted to the accused Head Constable. The accused thereafter had recorded the statement of the complainant and his father on 11.09.1984. Thereafter, he had paid one

more visit to the village of the complainant and recorded statements of two other witnesses on 07.10.1984. On that day, the accused had also gone to the house of the complainant and the complainant was informed and asked that if he wants to have a favourable report, then he would be required to pay. The complainant was informed by the accused that the accused persons of the complaint filed by the complainant are influential persons and, therefore, the inquiry shall have to be made in a proper way. In response thereto, the complainant had asked the accused to inquire into the matter in a proper way “and he would understand”.

(ii) That on 11.10.1984, the complainant went to Kadi Police Station with an anxiety to inquire about the progress in the inquiry sent by the Court for investigation and outcome, if any. At that time, the accused told him that he was making inquiry properly and if he is paid Rs.500/, then he would forward the report to the Court on Monday. It is alleged by the prosecution that the complainant was not having Rs.500/ with him and he was having only Rs.200/ with

him and so accused was informed accordingly. Thereafter, on asking, Rs.200/ were paid to the accused by the complainant and it was accepted by the accused. The accused thereafter asked the complainant to pay the remaining amount of Rs.300/ on 13.10.1984. It is alleged by the prosecution that the complainant thereafter had asked the accused as to where he should meet and make payment of that amount and in turn, the accused told the complainant that the accused would be at his residence up to 4.00 p.m. on that day and, therefore, he should contact him at his residence or at the tea-stall of Maharaj situated opposite Taluka Panchayat Office. The complainant should try to contact the accused at the hotel of Maharaj and he should bring Rs.300/ and thereafter he would forward the report in his favour to the Court on Monday. Thus, according to the prosecution, on 11.10.1984, a specific demand of Rs.500/ as illegal gratification was made by the accused on that very day and on that very day he had accepted Rs.200/ from the complainant at Kadi Police Station. The accused had asked to pay remaining amount of Rs.300/ on 13.10.1984. As the complainant was not ready and

willing to pay illegal gratification of Rs.300/- and as the accused had accepted Rs.200/ as party payment, the complainant approached ACB Office at Ahmedabad on 13.10.1984 and lodged the complaint.

(iii) According to the prosecution, thereafter, PI Mr. Zaveri had arranged for the trap by calling two independent panchas and accused was caught while accepting muddamal currency notes smeared with anthracene powder in presence of panchas. Two currency notes of Rs.100/ denomination and two other currency notes of Rs.50/ denomination were recovered from the complainant. PI Mr. Zaveri had recovered certain documents including the papers of inquiry case entrusted for investigation to the accused along with muddamal currency notes. It is mentioned in the panchanama that statements of certain witnesses were left incomplete and they were also found along with the papers recovered.

(iv) Thereafter, complaint was registered against the accused and after completion of investigation, the case was registered against the accused being Special

(ACB) Case No.3/1986 and the accused came to be tried by the ld. Special Judge and vide impugned judgment, the accused came to be convicted and sentenced as aforesaid.

7. The evidence of the complainant is at exh.18 and he has proved the contents of complaint exh.19. From the plain reading of the evidence of the complainant, it is clear that there is no material conflict in the version of the complainant before Mr. Zaveri, PI, ACB and in his deposition before the Court and, therefore, the defence could not bring on record any material contradictions. Of course, the complainant was an Advocate and, therefore, a person conversant with the proceedings and very much interested in the result of the case. According to the complainant, his reputation and reputation of his father was damaged as accused persons, in a community meeting, imposed a fine of Rs.8,000/ on the complainant and his father and in default of payment of fine, decided to ex-communicate the family of the complainant. It is true that at two places, the conduct of the complainant emerges as conduct of an

accomplice because according to the complainant himself, he had responded to the accused on 07.10.1984 that “he would understand the things”. When certain expectations were expressed by the accused thereafter again on 11.10.1984 when complainant had been to Kadi Police Station, he paid Rs.200/ to the accused. It also emerges from the evidence of the complainant that his anxiety was to see that a report is sent to the Court at the earliest and the accused should help him in sending a favourable report. The complainant has stated in his deposition that his statement was recorded on 11.09.1984 and his father's statement was also recorded on the same day by the accused, but during the course of cross-examination, he has stated that the accused has changed the statement, meaning thereby that he had replaced the statement of the complainant. Of course, it is not clear from the evidence of the witnesses examined that whether the contents of the statement that were there along with muddamal papers were read over to the complainant or not, but it is inferable that the same must have been shown to the complainant and, therefore only, he had

responded to the question accordingly and has alleged that his statement was changed by the accused. For the sake of arguments, if it is accepted that in absence of any cogent speaking circumstance the say of the complainant is not accepted as to the allegations made by him in the cross-examination about changing of his statement my the accused, there is no inconsistency qua the evidence given by the complainant qua the illegal gratification made by the accused firstly on 07.10.1984 and secondly on 11.10.1984. Merely because on 07.10.1984, no specific amount was stated, it can not be said that no demand was made by the accused. It is true that the conversation that had taken place between the accused and the complainant on 07.10.1984 were personal and, therefore, obviously there could not be any witness who can corroborate the complainant, but if the Court is able to hear the ring of truth in the say of the complainant, uncorroborated testimony also can be accepted, is the established principle of law. Of course, the Court should be conscious in evaluating the evidence when it intends to rely on any uncorroborated version of an accomplice. Here in

the present case, the say of the complainant is that Rs.200/ were accepted on 11.10.1984 from him by the accused. For this part of evidence also, there is no corroboration. But on plain reading of the cross-examination, it emerges that Rs.500/ were demanded as illegal gratification because the subsequent circumstances and conduct of the accused amply helps the complainant and his version. The ld. Trial Judge has taken care to see that the say of the complainant is accepted only if he is able to get sufficient corroboration from other witnesses examined by the prosecution. It is settled legal position that the version of the witness found accomplice should not be accepted as gospel truth and the Court should try to seek sufficient reliable corroborative piece of evidence either oral or documentary or both and here the ld. Trial Judge has, therefore, discussed the evidence of panch witness Mr. Amit Shah exh.21 in detail as well as the evidence of Mr. Pagi, PSI, ACB at exh.28.

8. As such, there is no challenge qua the first part of the panchanama drawn by PI Mr. Zaveri in the presence of panchas. The defence side has never

alleged anything qua the integrity of the panch witness examined. There is no serious challenge as to the selection of Mr. Amit Shah as panch witness. This very panch Mr. Amit Shah has satisfactorily proved the vital part of the panchanama exh.22. The complainant as well as panch witness have responded to the hypothetical questions placed during the course of cross-examination. It is true that the complainant was asked to come down to the residence of the accused before 4.00 p.m. On 13.10.1984. It is accepted by the witness that residence of the accused was the best place to accept the bribe amount, but the sequence of evidence by these witnesses, consistent to each other, clearly reveals that the complainant had followed the instructions given to him by the accused and he went to the residence of the accused. It is in evidence that the accused was resting and, therefore, he had directed the complainant to go to the hotel of Maharaj and, therefore, the complainant and panch No.1 had occupied the bench placed near the hotel. The evidence if read as a whole, it is clear that the hotel of “Maharaj” in reality is not a hotel, but it

was a open tea-stall and certain benches were kept opposite to the office of Taluka Panchayat and the defence witness i.e. Maharaj of tea-stall examined was preparing tea facing the front side, meaning thereby that the road side and was serving tea to the customers sitting behind him on the benches. The evidence is hazy as to the number of benches placed at the hotel. At one place, it is referred that there were two to four benches and one was occupied by the panch as well as the complainant till the arrival of the accused. The accused had reach the spot in the uniform and after arrival of the accused, some conversation had taken place about the inquiry case and on demand, muddamal currency notes of Rs.300/ were given to the accused by the complainant. The area being an open area and a public place, the members of raiding party were in vicinity and it has come on record that Mr. Pagi, PSI has placed himself at a reasonable distance and was able to see the person sitting on the bench. More than one witnesses have to state that the members of raiding party were in nearby vicinity and they were able to see each other. The complainant has said that he passed

muddamal currency notes on demand to the accused. Panch Mr. Amit Shah corroborates his version. This version of both these witnesses gets corroboration from the panchanama drawn on the spot and was also by PSI Mr. Pagi. It is true that Mr. Pagi being PSI and member of the raiding party, was a trap witness and equally interested in the success of the trap, but it is settled law that panch witness is not a trap witness. Unless the independence of a panch is seriously assailed and the Court is satisfied about the impeachment made about the independence of the panch witness, the version of the trap witness can be accepted safely by the Court if such witness is able to get substantive corroboration from the evidence of independent witness.

9. It is settled that the conduct of the accused is relevant fact and if such conduct is capable of constituting a circumstance either in his favour or in favour of the prosecution, the Court can obviously consider such conduct. It is not a matter of dispute that in an inquiry case entrusted to the accused for investigation, the statements of the complainant and his father were recorded on 11.09.1984 and it is

practically admitted by the accused that he did pay visit to the village of the complainant on 07.10.1984 and had recorded the statements of two witnesses as witnesses in the inquiry case, then there was no reason for him to call the complainant to see him because it is not the defence of the accused that he had recorded further statement of the complainant or his father on that day nor he has said in his statement under section 313 of CrPC that he had an intention to record the further statement of the complainant and, therefore, he had asked the complainant to see him during his said visit to the village in the matter of inquiry. It is unchallenged evidence that the accused had called the complainant to see him on 07.10.1984 when he had gone to the village of the complainant and on asking why he had been called, the complainant was told that the accused is coming to his residence. There was no reason for the accused to visit the residence of the complainant on 07.10.1984. This conduct is not a transparent or bona fide conduct of the investigating officer or of any inquiry officer. With this set of facts in the background, the

complainant says in his deposition before the Court that on 07.10.1984, the accused demanded illegal gratification stating that the other side i.e. the accused persons of the complaint filed by the complainant are influential and, therefore, the complainant should pay something to him to get a favourable report, then why his version should not be accepted was the question before the trial Court and the trial Court has assigned sound reasons for accepting the say of the complainant. It is true that on 07.10.1984, no specific amount was stated by the accused, but the complainant is consistent in his version that the amount was specified by the accused on 11.10.1984. Normally, an Advocate should not go to a police station and the advocate has no reason to enter into any discussion or conversation with the officer assigned with inquiry or investigation, but here the complainant was incidentally an Advocate. So, as a complainant, if he had paid a visit to Kadi Police Station to know the out-come of the inquiry entrusted to the accused and especially when the accused had paid visit to the village of the complainant on 07.10.1984, then such a conduct of the

complainant is not condemnable or treated as a visit with any other motive. On 11.10.1984, Rs.500/ were demanded. The complainant had put on practice of some months only. A novish lawyer may not have Rs.500/ in his pocket and he has stated before the Court and to the satisfaction of the Court that as he was not having Rs.500/ with him, he had paid Rs.200/. The crucial question would be that if he had enough amount, whether he would have parted with entire sum to have favourable report and the answer obviously would be in the affirmative. But whether this would make the complainant accomplice? According to the complainant, he was not desirous to pay Rs.200/ even on that day, even then he had paid and decided to file a complaint against the accused. So, the conduct of the accused to pay visit to the residence of the complainant on 07.10.1984 is a conduct consistent to the guilt. It is true that very conduct may not be inconsistent to the innocence of the accused, but when the conduct is found consistent with guilt, the same can be used by the prosecution while placing corroborative piece of evidence or while placing speaking circumstances against the accused. The ld.

Trial Judge after elaborate discussion has accepted the say of the complainant that the initial demand was made on 07.10.1984, it was specified by the accused on 11.10.1984 and accused accepted Rs.200/ from the complainant on 11.10.1984. On that very date and point of time, the complainant was asked to pay the remaining amount of Rs.300/ on 13.10.1984 and the trap was arranged.

10. On careful reading of the judgment under challenge, when the Court is satisfied that the findings recorded by the ld. Trial Judge are based on sound reasons and there is no error apparent either of law or facts in appreciating the evidence, this Court can adopt the reasons assigned by the ld. Trial Judge while confirming the order under challenge. It is not necessary, otherwise it is possible for this Court to reproduce the relevant part of the reasons assigned by the ld. Trial Judge referred to by ld. APP Ms. Pandit i.e. paras 26 to 30 of the judgment under challenge. However, that would be nothing but duplication. The ld. Trial Judge has responded to each argument advanced by the defence counsel. This

Court is not in agreement with the submissions made by Mr. Medipillai that the say of Mr. Pagi before the trial Court is not clear about the acceptance of muddamal currency notes because Mr. Pagi has not stated specifically that he had seen the act of handing over of muddamal currency notes to the accused. Mr. Pagi has mainly used the words “something” and such version should be considered as vague and no reliance could have been placed by the ld. Trial Judge, is the submission of ld. Counsel Mr. Medipillai. But considering the distance between the accused, complainant and PSI Mr. Pagi where he was sitting as a member of the raiding party, it was not possible for him to state so specifically that he had seen muddamal currency notes only. On the contrary, such version of Mr. Pagi could have been condemned by the Court. The prosecution was supposed to answer that what was that “thing” and the same has been satisfactorily answered by the prosecution that the “thing” which was seen by the witness i.e. PSI Mr. Pagi was nothing but the muddamal currency notes because as per the first part of panchanama, muddamal currency notes were kept having specific description

smeared with anthracene powder which were put in the pocket of the complainant and after raid, the same were found from the left side pocket of the pant of the accused. The defence of the accused is a defence of total denial. Certain suggestions are made to the witnesses that the complainant had attempted to plant the amount in the pocket of the accused and he had inserted currency notes in the pant pocket of the accused, but this would mean that the accused does not dispute the recovery of muddamal currency notes from his pocket. His explanation is that they were forcibly planted by the complainant. Whether such defence should be accepted or not is a crucial question. Of course, the accused had examined one defence witness, but this witness does not say anything about the conduct of the complainant and he has not even stated before the Court that the complainant had forcibly inserted muddamal currency notes or something in the pocket of the accused. On the contrary, this defence witness has accepted that certain writings were made by the members raiding party at the hotel only. When defence witness has stated so, then why the say of the panch or PSI Mr.

Pagi should not be believed that second part of the panchanama was drawn on the spot at the hotel of Maharaj. If it was a case of forcible planting, then no anthracene powder marks could have been seen on any of the hands of the accused. It is neither the say of the accused nor suggested to the witnesses and mainly panch No.1 that the accused himself was asked to take out the muddamal currency notes from his pocket. On the contrary, it has come on record that muddamal currency notes were recovered from the left side pocket of the pant of the accused and were taken out by panch No.1 Mr. Amit Shah examined by the Court and they were recovered and these currency notes were referred to in the first part of the panchanama. For short, this is a clear case of willful acceptance of muddamal currency notes which were tendered to the accused as an illegal gratification.

11. It is true that the demand immediately prior to the acceptance if pleaded should come on record successfully. The conversation immediately prior to the acceptance of the amount by the accused and the complainant is crucial and if inconsistency in the

version of the complainant and panch if is found of material nature and the conflict is found to be of significant type, then the Court should evaluate the version of these witnesses very carefully in accepting the version of any of these witnesses. There was no reason for the accused to leave incomplete statements of witnesses who were material witnesses in the inquiry case. Such documents are produced as muddamal articles before the Court and they have been referred clearly in the second part of the panchanama. When the say of the complainant is that illegal gratification was demanded to prepare a favourable report and to submit it to the Court at the earliest and preferably on Monday, availability of incomplete statements of witnesses in the case papers recovered from the accused becomes a cogent circumstance and, therefore only, the ld. Trial Judge has not accepted the defence plea of forcible planting of muddamal currency notes. How a complainant would know that certain statements are still incomplete available in the papers of the inquiry officer? For the sake of arguments even if it is accepted that the accused was to proceed to

record the statement of Mr. Ambalal on 13.10.1984, even then this potential act of accused was of a helping hand to the complainant because the complainant was desirous to see that statement of Mr. Ambalal is recorded at the earliest. At that very crucial juncture, whether a lawyer would plant muddamal currency notes in to the pocket of a police officer who is entrusted with inquiry of the criminal case on the basis of the criminal complaint registered by the complainant in his personal capacity, is the question and the answer would be in negative. The prosecution was under sections 500, 114 of IPC and also under section 4 of the Bombay Prevention of Ex-Communication Act. Even if report is not favourable to the complainant, he could have resisted the report before the Court and the ld. Magistrate at Kadi was competent to issue process. Even the report submitted by the Inquiry Officer is not favouring the complainant. So, there was no reason for the complainant to plant money and, therefore, the ld. Trial Judge has rightly not accepted the defence plea.

13. This Court, obviously would have considered the

comments as to quantum of punishment imposed by the ld. Trial Judge, but as the appellant accused has expired pending the hearing and final disposal of this criminal appeal and accused is not to undergo any substantive sentence, it is not necessary to pass any orders as to actual period of imprisonment imposed by the ld. Trial Judge especially when there was no minimum punishment prescribed.

14. For short, there is no merits in the present appeal and hence the same requires to be dismissed. Hence, the present Criminal Appeal is hereby dismissed. The impugned judgment and order of conviction and sentence passed by the trial Court is hereby confirmed. Since the appellant accused has expired pending the hearing and final disposal of the present criminal appeal, no orders as to cancellation of his bail-bonds and directing him to surrender to serve out the sentence, are required to be passed.

[C.K. BUCH, J]

*rawal